



4. Defendant, CHIEF CHARLES MCCLELLAND, is the Chief of the Houston Police Department employed by the City of Houston and is an individual who is a citizen of the State of Texas and may be served with process by serving the Legal Services Department of the Houston Police Department, at 1200 Travis Street, Houston, Texas 77002. Defendant is sued in his individual capacity and in his official capacity as the Chief of the Houston Police Department employed by the City of Houston, Texas. At all times material hereto, Defendant was employed by the City of Houston as it's chief law enforcement officer and policy maker for the Houston Police Department. At all times material hereto, Defendant was acting under color of state law or local ordinance.

5. Defendant, OFFICER ADRIAN LOPEZ, is a police officer employed by the City of Houston and is an individual who is a citizen of the State of Texas and can be served at his place of employment: Houston Police Department, Northwest Station at 6000 Teague Street, Houston, Texas 77041. Defendant is sued in his individual capacity and in his official capacity as Police Officer employed by the City of Houston, Texas. At all times material hereto, Defendant was employed as a law enforcement officer by the City of Houston. At all times material hereto, Defendant was acting under color of state law or local ordinance.

6. Defendant, OFFICER SAUL DELACRUZ, is a police officer employed by the City of Houston and is an individual who is a citizen of the State of Texas and can be served at his place of employment: Houston Police Department, Northwest Station at 6000 Teague Street, Houston, Texas 77041. Defendant is sued in his individual capacity and in his official capacity as Police Officer employed by the City of Houston, Texas. At all times material hereto, Defendant was employed as a law enforcement officer by the City of Houston. At all times material hereto, Defendant was acting under color of state law or local ordinance.

## **JURISDICTION**

7. The Court has jurisdiction over the lawsuit because the suit arises under *42 U.S.C. §1983*.

## **VENUE**

8. Venue is proper in this district under *28 U.S.C. §1391(b)(1)* because Defendant City of Houston is located in this district and all Defendants reside in this state.

9. Venue is proper in this district under *28 U.S.C. §1391(b)(2)* because a substantial part of the events or omissions giving rise to this claim occurred in this district. The constitutional violations which give rise to the complained of violation of *42 U.S.C. §1983* occurred during the execution of warrants at the Plaintiff's residence.

## **TEXAS TORT CLAIMS ACT**

10. Defendant City of Houston is not required to receive notice as a condition precedent to the filing this law suit because the City of Houston and the Houston Police Department had actual notice that Plaintiffs' property had been damaged when Plaintiffs filed a complaint with the Internal Affairs Division of the Houston Police Department. *CPRC §101.101(c)*.

11. Defendant City of Houston is liable for damages arising from the exercise of governmental functions which include the exercising of police powers. *CPRC §101.0215(a)(1)*.

12. Sovereign immunity to suit is waived and abolished to the extent of liability created by this chapter; and a person having a claim under this chapter may sue a governmental unit for damages allowed by this chapter. *CPRC §101.025*.

## **FACTS**

13. During the evening of October 19, 2012, Houston Police Officers Lopez and Delacruz went to the home of Plaintiffs located at 1339 Tulane Street, Houston, Harris County, Texas, to investigate a disturbance call made by the Plaintiffs' neighbor.

14. As the officers approached the Plaintiffs' home, their dog known as Boss alerted by the sound of someone approaching the home, went to the front door to investigate.

15. Upon seeing Boss approaching the front door, both officers drew their weapons and opened fire on Boss.

16. Boss made no aggressive move towards the officers.

17. At the time the first shots were fired, Boss was inside the Plaintiffs' home and the officers were outside the Plaintiffs' home.

18. The officers fired their weapons across the threshold of Plaintiffs' front door and into the Plaintiffs' home.

19. Boss was hit by gun fire while still inside the house.

20. Boss then ran out the front door and passed the officers to the side of the home where he kept his toys.

21. The officers chased Boss down and continued to fire their weapons.

22. Boss bled to death after sustaining several gunshot wounds.

23. When a Houston Police Officer shoots a dog, the only investigation conducted is by the on-duty supervisor.

24. Prior to March 26, 2007, all discharges of a firearm by an officer were investigated by the Internal Affairs Division, including the shooting of dogs. That procedure was changed in an effort to save time and thus money.

25. The lack of accountability for the shooting of family pets fosters an environment of callous indifference to the destruction of a citizen's personal property.

26. The Plaintiffs filed a complaint with the Houston Police Department.

27. The Internal Affairs Division of the Houston Police Department ruled the shooting of Boss was justified.

28. There has never been an instance where a Houston Police officer has been disciplined or required to attend remedial training for killing a family pet.

29. Plaintiffs' property was seized without probable cause or valid warrant by officers, who were acting in the course and scope of their employment as Houston police officers for the City of Houston.

30. Plaintiffs' property was destroyed by officers, who *were* acting in the course and scope of their employment as Houston police officers for the City of Houston.

31. Defendants used unreasonable, unnecessary, and excessive force against Plaintiffs' property.

32. The injuries suffered by Plaintiffs were significant, substantial, and severe. Plaintiffs lost the use of their tangible personal property, and loss of their beloved pet of over 8 years.

33. At the time of the shooting, Defendants were acting under color of the laws and regulations of the State of Texas and the Houston Police Department.

34. At the time of the shooting, Defendant McClelland was the chief law enforcement officer and policy maker for the Houston Police Department.

35. At the time of the shooting and all times prior to the shooting, the Houston Police Department had no policy requiring its officers be trained in dog behavior, and the appropriate

use of non-lethal tools and the force continuum as it relates to encounters with the family dog.

36. The Houston Police Department's lack of policy enabled its agents and employees to act with deliberate indifference to the constitutional rights of individuals. Specifically, the Houston Police Department had no policy in place regarding the handling and securing of domestic animals.

### **COUNT 1 – VIOLATION OF CONSTITUTIONAL RIGHTS**

37. The Houston Police Department's lack of policy regarding the securing of domestic animals and the lack of training in handling of domestic animals violated Plaintiff's clearly established rights under the *U.S. Constitution*:

(A) "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation..." *U.S. Constitution, Amendment IV*.

(B) "No person shall ...be deprived of life, liberty, or property, without due process of law." *U.S. Constitution, Amendment V*.

(C) "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *U.S. Constitution, Amendment XIV, Section 1*.

### **COUNT 2 – 42 U.S.C. §1983 CLAIM AGAINST INDIVIDUAL DEFENDANTS**

38. Defendant McClelland acted willfully, deliberately, maliciously, or with reckless disregard for Plaintiffs' clearly established constitutional rights by continuing the Houston Police Department's policy of no investigation by the internal affairs division of all discharges of an officer's weapon, and choose to ignore that risk and disregard the constitutional rights of the

citizens of Houston.

39. That officer, Lopez, acted willfully, deliberately, maliciously, or with reckless disregard for Plaintiffs' clearly established constitutional rights when Lopez shot and killed Plaintiffs' dog known as Boss.

40. That officer, Lopez, acted willfully, deliberately, maliciously, or with reckless disregard for Plaintiffs' clearly established constitutional rights when Lopez shot and killed Plaintiffs' dog known as Boss.

### **COUNT 3 – NEGLIGENCE: FAILURE TO TRAIN AND SUPERVISE**

41. Defendant McClelland as chief law enforcement officer and head policy maker for the Houston Police Department had a legal duty to safeguard the constitutional rights of the citizens of Houston by the exercise ordinary care in the supervising and training of Houston Police Officers.

42. Defendant McClelland breached that duty when Defendant negligently supervised and trained, Adrian Lopez. Plaintiff alleges Defendant McClelland was negligent in the following respects and particulars among others:

- A. By failing to inquire in the competency and qualifications of Adrian Lopez to perform the job for which Adrian Lopez was employed;
- B. By failing to assure that Adrian Lopez possessed the special skills and experience required to perform the job for which Adrian Lopez was employed;
- C. By failing to adequately supervise Adrian Lopez in performance of the job for which Adrian Lopez was employed;
- D. By failing to adequately train Adrian Lopez to perform the job for which Adrian Lopez was employed;
- E. By failing to remain knowledgeable about Adrian Lopez's competency and fitness to perform the job for which Adrian Lopez was employed.

43. Defendant McClelland breached that duty when Defendant negligently supervised and trained, Saul Delacruz. Plaintiff alleges Defendant McClelland was negligent in the following respects and particulars among others:

- A. By failing to inquire in the competency and qualifications of Saul Delacruz to perform the job for which Adrian Lopez was employed;
- B. By failing to assure that Saul Delacruz possessed the special skills and experience required to perform the job for which Saul Delacruz was employed;
- C. By failing to adequately supervise Saul Delacruz in performance of the job for which Adrian Lopez was employed;
- D. By failing to adequately train Saul Delacruz to perform the job for which Saul Delacruz was employed;
- E. By failing to remain knowledgeable about Saul Delacruz's competency and fitness to perform the job for which Saul Delacruz was employed.

#### **DAMAGES**

44. As a direct and proximate result of the officers' disregard for Plaintiffs' constitutional rights, Plaintiffs suffered the following injuries and damages:

- a. Mental anguish in the past, present and future.
- b. Property damage.
- c. Compensatory Damages

#### **PUNITIVE DAMAGES**

45. Plaintiffs are entitled to an award of punitive damages only against the individual Defendants when their conduct involves reckless or callous indifference to the federally protected rights of others. *Smith v. Wade*, 461 U.S. 30 (1983).

46. Defendant Lopez, with reckless or callous indifference to the federally protected rights of Plaintiffs when he fired a weapon into Plaintiffs' home and killed Plaintiffs' dog



without just or reasonable cause.

47. Defendant Delacruz, with reckless or callous indifference to the federally protected rights of Plaintiffs when he fired a weapon into Plaintiffs' home and killed Plaintiffs' dog without just or reasonable cause.

48. Defendant McClelland, with reckless or callous indifference to the federally protected rights of Plaintiffs, did failing to train or supervise officers under his command by failing to train his officers in handling and securing of family pets, and which would have safeguard the personal property of Plaintiffs.; and by continuing the Houston Police Department's policy of no investigation by the Internal Affairs Division of all discharges of an officer's weapon thereby fostering an environment of callous indifference to the destruction of a citizen's personal property.

#### **ATTORNEY FEES**

49. Plaintiffs are entitled to an award of attorney fees and costs under 42 U.S.C. §1988(b).

#### **INJUNCTIVE RELIEF**

50. That the City of Houston be required to establish a clear policy with regard to the handling and securing of domestic animals.

#### **PRAYER**

51. For these reasons, Plaintiffs ask for judgment against Defendants for the following:


- a. Injunctive relief.
- b. Actual damages.
- c. Punitive Damages
- c. Reasonable attorney fees.

- d. Prejudgment and post judgment interest.
- e. Costs of suit.
- f. All other relief the Court deems appropriate.

**PLAINTIFF'S DEMAND FOR JURY TRIAL**

52. Plaintiffs, Wesley and Aisling Jones, assert their rights under the *Seventh Amendment to the U.S. Constitution* and demands, in accordance with *Federal Rule of Civil Procedure 38*, a trial by jury on all issues.

Respectfully submitted,

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*Attorneys for Plaintiffs*



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CITY OF HOUSTON,  
A Municipal Corporation;  
CHIEF CHARLES MCCLELLAND,  
Officially and Individually;  
OFFICER ADRIAN LOPEZ,  
Officially and Individually; and  
OFFICER SAMMY DELACRUZ,  
Officially and individually;  
Defendants.**

**CIVIL ACTION NO.: H-14-2728**

## PARTIES

- 1

4. Defendant, CHIEF CHARLES MCCLELLAND, is the Chief of the Houston Police Department employed by the City of Houston and is an individual who is a citizen of the State of Texas and may be served with process by serving the Legal Services Department of the Houston Police Department, at 1200 Travis Street, Houston, Texas 77002. Defendant is sued in his individual capacity and in his official capacity as the Chief of the Houston Police Department employed by the City of Houston, Texas. At all times material hereto, Defendant was employed by the City of Houston as it's chief law enforcement officer and policy maker for the Houston Police Department. At all times material hereto, Defendant was acting under color of state law or local ordinance.

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6. Defendant, OFFICER SAMMY DELACRUZ, is a police officer employed by the City of Houston and is an individual who is a citizen of the State of Texas and can be served at his place of employment: Houston Police Department, IFR Division, at 61 Riesner Street, Houston, Texas 77002. Defendant is sued in his individual capacity and in his official capacity as Police Officer employed by the City of Houston, Texas. At all times material hereto, Defendant was employed as a law enforcement officer by the City of Houston. At all times material hereto, Defendant was acting under color of state law or local ordinance.

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- D. By failing to adequately train Adrian Lopez to perform the job for which Adrian Lopez was employed;
- E. By failing to remain knowledgeable about Adrian Lopez's competency and fitness to perform the job for which Adrian Lopez was employed.

43. Defendant McClelland breached that duty when Defendant negligently supervised and trained, Sammy Delacruz. Plaintiff alleges Defendant McClelland was negligent in the following respects and particulars among others:

- A. By failing to inquire in the competency and qualifications of Sammy Delacruz to perform the job for which Sammy Delacruz was employed;
- B. By failing to assure that Sammy Delacruz possessed the special skills and experience required to perform the job for which Sammy Delacruz was employed;
- C. By failing to adequately supervise Sammy Delacruz in performance of the job for which Adrian Lopez was employed;
- D. By failing to adequately train Sammy Delacruz to perform the job for which Sammy Delacruz was employed;
- E. By failing to remain knowledgeable about Sammy Delacruz's competency and fitness to perform the job for which Sammy Delacruz was employed.

#### **DAMAGES**

44. As a direct and proximate result of the officers' disregard for Plaintiffs' constitutional rights, Plaintiffs suffered the following injuries and damages:

- a. Mental anguish in the past, present and future.
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#### **PUNITIVE DAMAGES**

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50. That the City of Houston be required to establish a clear policy with regard to the handling and securing of domestic animals.

#### **PRAYER**

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52. Plaintiffs, Wesley and Aisling Jones, assert their rights under the *Seventh Amendment to the U.S. Constitution* and demands, in accordance with *Federal Rule of Civil Procedure 38*, a trial by jury on all issues.

Respectfully submitted,

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